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19 SHAREHOLDER DERIVATIVE LITIGATION

20 This Document Relates to: All Actions

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22 **HEWLETT-PACKARD'S  
23 MEMORANDUM IN RESPONSE TO  
24 STEINBERG'S ADMINISTRATIVE  
25 MOTION TO SEAL DOCUMENTS**

26 Dept.: Courtroom 6, 17th Floor  
27 Judge: Hon. Charles R. Breyer

Pursuant to Civil Local Rule 7-11(b), Hewlett-Packard Company (“HP”) respectfully submits this memorandum in response to Harriet Steinberg and Edward Vogel’s administrative motion to file portions of their brief regarding the proposed settlement, and the corresponding unredacted pages of the Demand Review Committee’s resolution, under seal. (Docket #216.)

HP provided Steinberg an unredacted copy of the DRC resolution under a confidentiality agreement in response to the demand that she made to the company under 8 DEL. C. § 220. That statute gives shareholders of Delaware corporations (like HP) the right to access corporate books and records, including, if circumstances warrant it, privileged information. *Wal-Mart Stores, Inc. v. Ind. Elec. Workers Pension Trust Fund IBEW*, 95 A.3d 1264, 1278 (Del. 2014); *Grimes v. DSC Commc’ns Corp.*, 724 A.2d 561, 568 (Del. Ch. 1998). The DRC resolution includes privileged information that reflects HP’s future litigation strategy and its counsel’s assessment of its potential damage claims against Michael Lynch and Sushovan Hussain and therefore are protected by the attorney work product and attorney-client privileges.

The production to Steinberg did not operate as a waiver of the attorney-client or attorney work product privileges. See *Wal-Mart Stores*, 95 A.3d at 1276, 1278 (expressly recognizing that shareholders fall within “a fiduciary exception to the attorney-client privilege”); *Grimes*, 724 A.2d at 568 (noting that ““an oft-invoked exception [to a corporation’s attorney-client privilege] applies in suits by minority shareholders””); *Garner v. Wolfinbarger*, 430 F.2d 1093, 1102-03 (5th Cir. 1970) (analogizing the fiduciary exception applicable to shareholders to situations where “the same attorney acts for two or more parties having a common interest”); *Saito v. McKesson HBOC, Inc.*, No. 18553, 2002 WL 31657622, at \*4 (Del. Ch. Nov. 13, 2002) (attorney work product privilege is not waived “when the disclosing party and its recipient share some common interest”).

As a result, the redacted portions of Steinberg’s brief, and the corresponding pages of the unredacted DRC resolution, should remain under seal. Some of the information that Steinberg cites from privileged portions of Section XIV of the DRC resolution can be found in Section XVII.C.2(h), which is not privileged and therefore is not redacted. See Steinberg Br. i, 3-4, 15 (Docket #217). Steinberg already cites to Section XVII.C.2 in another portion of her brief. HP would have no objec-

1 tion if Steinberg chooses to amend her brief to delete the privileged information drawn from Section  
2 XIV and rely instead entirely on Section XVII.C.2.

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4 Dated: September 22, 2014

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